



May 10, 2016

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

RECEIVED ON:

MAY 18 2016

ORC
EPA Region 10
Office of the Regional Administrator

Re: Northwest Environmental Defense Center v. BJB Milling & Lumber, LLC
District of Oregon Case No. 6:15-cv-02349-AA

To Whom It May Concern:

The parties to the above-reference case have signed and asked the U.S. District Court for the District of Oregon to enter a consent decree settling the case. The consent decree includes at least one SEP payment to McKenzie River Trust. As per the Department of Justice's request, I am sending this letter to confirm that: (1) I have read the proposed consent judgment; (2) McKenzie River Trust will spend any monies it receives under the consent judgment for the purposes specified in the consent judgment; (3) McKenzie River Trust is a 501(c)(3) tax-exempt organization; (4) McKenzie River Trust will not use any money it receives under the consent judgment for lobbying purposes; and (5) McKenzie River Trust will submit to the Court, the United States, and the parties a letter describing how the SEP funds were spent.

McKenzie River Trust will use the SEP funds for floodplain habitat restoration projects in the McKenzie Basin. Fish and wildlife populations and water quality in the Basin have declined as resource extraction and development in the floodplain has reduced the river's ability to meander and connect with historic floodplains at times of seasonal high water. At the same time, the spread of non-native plants and animals has increased competitive pressures in available habitats. By protecting healthy floodplain habitats that remain, and by re-establishing the natural river processes in impacted areas, the McKenzie River Trust and our partners are creating areas that are much friendlier to native fish like Upper Willamette spring Chinook salmon, Oregon chub, largescale sucker, northern pikeminnow, prickly sculpin, peamouth, three-spine stickleback, cutthroat trout, and pacific lamprey. Native waterfowl such as hooded merganser, wood duck, pied-billed grebe, great blue heron, and green heron also benefit from such projects. Our projects also benefit western pond turtle, red-legged frog, river otter, and beaver as well. All of this work also helps ensure clean water for the many people that rely on the McKenzie and Willamette Rivers for drinking water and other uses.

BJB Milling & Lumber, LLC is located in Eugene, Oregon, in the McKenzie River basin. The SEP projects therefore have a substantive and geographical nexus to the Clean Water Act violations alleged in Northwest Environmental Defense Center's complaint. Since 2010, the McKenzie River Trust has worked with partners to restore floodplain connections at Green Island, at the confluence of the McKenzie and Willamette Rivers, as well as other sites near Eugene. Our ongoing restoration work at

Protecting Special Lands

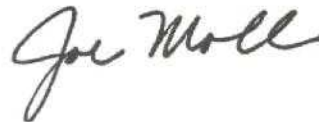
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EPA Region 9

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the Coburg Aggregate Reclamation Project (CARP) has become a regional model for restoring abandoned gravel mines that pepper the Willamette Valley floodplain, converting them to productive wetlands and side channel habitats for fish, birds, and amphibians. The Trust recently acquired an additional property with a 10 acre abandoned gravel pit near Finn Rock on the upper McKenzie River as well. We will use the SEP funds at Green Island, CARP, and/or Finn Rock sites in a manner that provides the greatest leverage for the contribution, matching it with funds garnered from private and public fundraising efforts.

We appreciate the opportunity to play a role in improving water quality and fish and wildlife habitat in ways that benefit communities today and far into the future. Thank your for helping us to do that. Please contact me if you have any questions or concerns about our work.

Sincerely,

A handwritten signature in black ink that reads "Joe Moll". The signature is written in a cursive, flowing style.

Joe Moll
Executive Director

Brian A. Knutsen, OSB #112266
KAMPMEIER & KNUTSEN PLLC
833 S.E. Main Street, No. 318
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Telephone: (503) 841-6515
Email: brian@kampmeierknutsen.com

Paul A. Kampmeier, WSBA #31560
Admitted *pro hac vice*
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Attorneys for Plaintiff

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Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

NORTHWEST ENVIRONMENTAL
DEFENSE CENTER,

Civil Case No.: 6:15-CV-02349-AA

Plaintiff,

v.

STIPULATIONS AND **[PROPOSED]**
CONSENT DECREE

BJB MILLING & LUMBER, LLC,

Defendant.

STIPULATIONS AND **[PROPOSED]** CONSENT DECREE

I. STIPULATIONS

1. BJB Milling & Lumber, LLC (hereinafter “BJB Milling” or “Defendant”) owns and operates a lumber mill facility at or near 101 Iowa Street, Eugene, Oregon 97402 (hereinafter the “Facility”).

2. Defendant’s Facility discharges stormwater associated with industrial activity to the Amazon Diversion Canal, Amazon Creek, the Long Tom River, and the Willamette River.

3. Defendant’s stormwater discharges are covered by the general industrial stormwater National Pollutant Discharge Elimination System 1200-Z permit issued by the Oregon Department of Environmental Quality under file number 108749 (hereinafter “NPDES Permit”).

4. On September 24, 2015, Plaintiff Northwest Environmental Defense Center (hereinafter “NEDC” or “Plaintiff”) sent Defendant a letter notifying BJB Milling that it was in violation of its NPDES Permit and the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and alerting BJB Milling that NEDC intended to sue BJB Milling for the alleged violations (hereinafter “Notice Letter”).

5. NEDC filed the Complaint in this action more than sixty days after Defendant received a copy of the Notice Letter.

6. Prior to and since receipt of the Notice Letter and the filing of the Complaint in this case, Defendant has taken various actions to improve the quality of stormwater discharged from the Facility and to comply with its NPDES Permit.

7. Plaintiff and Defendant (collectively the “Parties”), have agreed to settlement terms, which are stated and reflected in these stipulations and the following Consent Decree.

8. The Parties agree that settlement of this matter is in the best interest of the Parties and the public, and that entry of the following Consent Decree without additional litigation, and without trial or adjudication of the claims and allegations set forth in NEDC's Complaint and Notice Letter, is the most appropriate means of resolving this action.

9. Each Party acknowledges that it has sought and obtained the advice of its own independent legal counsel before executing these stipulations and before agreeing to be bound by the Consent Decree below. Additionally, the Parties acknowledge they have had the opportunity to freely negotiate the terms of the Consent Decree.

10. These stipulations and the Consent Decree below constitute the entire agreement between the Parties.

11. These stipulations and the following Consent Decree may only be modified or amended by a writing signed by both Parties and entered by the Court.

12. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment can be entered in a Clean Water Act suit in which the United States is not a Party prior to 45 days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney General and the Administrator of the U.S. Environmental Protection Agency ("U.S. EPA"). Therefore, upon the filing of this proposed Consent Decree by the Parties, NEDC will serve copies of it upon the Administrator of the U.S. EPA and the U.S. Attorney General.

13. If for any reason the Court should decline to approve this proposed Consent Decree in the form presented, this Consent Decree is voidable at the discretion of either Party. If that occurs, the Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by the Court.

14. By signing below, the representatives for each Party certify that he or she is fully authorized by the Party whom he or she represents to join these stipulations, to enter into the terms and conditions of the following Consent Decree, and to legally bind the Party or Parties and their successors in interest. Defendant specifically represents and warrants that is capable of satisfying all monetary obligations imposed by this Consent Decree by the deadlines imposed.

15. Plaintiff and Defendant stipulate to entry of the following Consent Decree without trial, adjudication, or admission of any issues of fact or law regarding the claims and allegations set forth in Plaintiff's Complaint and Notice Letter.

SO STIPULATED AND AGREED.

NORTHWEST ENVIRONMENTAL DEFENSE CENTER

By: Mark Riskedahl
Mark Riskedahl, Executive Director

BJB MILLING & LUMBER, LLC

By: James A. Youel
James A. Youel, Manager

APPROVED AS TO FORM:

KAMPMEIER & KNUTSEN, PLLC

By: s/Paul Kampmeier
Paul A. Kampmeier, WSBA #31560

Attorneys for Plaintiff NEDC

HERSHNER HUNTER, LLP

By: s/Todd R. Johnston
Todd R. Johnston, OSB 992913

Attorneys for Defendant BJB Milling & Lumber, LLC

STIPULATIONS AND [PROPOSED] CONSENT DECREE

II. ORDER AND DECREE

THIS MATTER came before the Court upon the foregoing stipulations of the Parties. Having considered the stipulations and the terms and conditions set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a).
2. This Consent Decree shall inure to the benefit of, and be binding upon, the Parties and their successors, assigns, officials, agents, representatives, officers, directors, and employees. Changes in the organizational form or status of a Party shall have no effect on the binding nature of this Consent Decree or its applicability.
3. This Consent Decree and any injunctive relief ordered within applies to and binds Defendant and its operation and oversight of its industrial lumber mill Facility at 101 Iowa Street, Eugene, Oregon 97402.
4. This Consent Decree is a full and complete settlement of all Clean Water Act violations alleged in the Notice Letter and the Complaint against Defendant arising from operations at the Facility.
5. Except as stipulated above or ordered herein, nothing in this Consent Decree constitutes an admission of any allegation in the Notice Letter or Complaint or of any fact or conclusion of law related to such allegations.
6. **Permit Compliance.** BJB Milling shall operate the Facility in compliance with the terms and conditions of its NPDES Permit.
7. **Corrective Actions.** By September 1, 2016, BJB Milling shall make the necessary upgrades, improvements and changes to its stormwater treatment measures (if any are

needed) to ensure compliance with its NPDES Permit, which may include modifying the filtration and treatment system containing biochar-amended treatment media that BJB Milling has constructed. Such stormwater management measures shall be developed and implemented by BJB Milling pursuant to its existing or subsequently amended Stormwater Pollution Control Plan, prepared by or certified by an environmental engineering consultant that is qualified to assist industrial facilities with stormwater management and that has either a licensed Professional Engineer or a certified engineering geologist on staff (hereinafter the "Consultant").

8. **Water Quality Sampling.** While this Consent Decree is in effect BJB Milling shall increase the frequency of water quality monitoring it performs at the Facility, as follows:

a. For the area marked "DB I" on the Stormwater Drainage Map that is attached to this Consent Decree as Exhibit 1 (hereinafter "DB I"), BJB Milling shall take water quality samples and monitor Statewide Benchmark pollutants (copper, lead, zinc, total suspended solids, and oil & grease) and Sector-Specific pollutants (chemical oxygen demand) at its monitored stormwater outfall six (6) times per year instead of the four (4) times per year required by its NPDES Permit. Also for DB I, BJB Milling shall take water quality samples and monitor for arsenic and tetrachloroethylene at its monitored stormwater outfall three (3) times per year instead of the two (2) times per year required by its NPDES Permit. Notwithstanding the obligations imposed by this Paragraph, if BJB Milling obtains from the City of Eugene or the Oregon Department of Environmental Quality ("DEQ") a monitoring waiver for tetrachloroethylene then BJB Milling does not need to monitor for that pollutant.

b. BJB Milling shall report the results of the additional monitoring required by this Paragraph to the City of Eugene as per Schedule B of the NPDES permit and BJB

Milling shall use the results of the water quality sampling required by this Paragraph to evaluate and ensure compliance with the Benchmarks stated in Schedule A.9 of the NPDES Permit, to take corrective actions as per Schedule A.10 through A.12 of the NPDES permit, and to evaluate and ensure compliance with the sector-specific requirements in Schedule E of the NPDES Permit.

c. If BJB Milling demonstrates, and NEDC agrees in writing, that a lack of stormwater made it impossible for BJB Milling to sample stormwater and report the results as required by this Paragraph, then BJB Milling's failure to comply with Paragraph 8.a. or 8.b. in a given instance shall not constitute a violation of this Consent Decree or require BJB Milling to make a stipulated payment under Paragraph 14 of this Consent Decree.

9. Data Reporting.

a. While this Consent Decree is in effect, every six months BJB Milling shall review its compliance with this Consent Decree and its NPDES Permit and produce a written report that includes a narrative description detailing the work completed that period to comply with this Consent Decree and its NPDES Permit; any monitoring reports, records or logs maintained pursuant to the Stormwater Pollution Control Plan or its NPDES Permit; and a summary of any changes made to the Stormwater Pollution Control Plan or stormwater management at the Facility.

b. BJB Milling shall mail a copy of the written report required by Paragraph 9.a. of this Consent Decree to NEDC within seven (7) days of completing each review.

c. BJB Milling shall provide NEDC with all laboratory analyses related to sampling at the Facility within seven (7) days of receipt of such information by BJB Milling.

10. **Document Provision.** While this Consent Decree is in effect, BJB Milling shall send to NEDC a copy of all documents and communications related to water quality at the Facility that are submitted to EPA, EPA Region 10, DEQ, and/or any State, local agency, county, or municipality. Such reports and documents shall be mailed to NEDC at the same time they are sent to the agencies and/or municipalities. Additionally, within seven (7) business days of receipt by BJB Milling, BJB Milling shall send NEDC all correspondence it receives from any regulatory agency, State or local agency, county, or municipality related to stormwater discharges from the Facility.

11. **Dismissal of Appeal and Satisfaction of Oregon Civil Penalty.** Within seven (7) days of the Effective Date of this Consent Decree, BJB Milling shall dismiss its appeal of DEQ's Notice of Civil Penalty Assessment and Order in case number WQ/SW-WR-16-005, dated March 22, 2016, and shall satisfy the civil penalty of \$6,400 that Oregon imposed for Defendant's violations of Oregon's state water quality laws.

12. **Supplemental Environmental Project.** Within seven (7) days of the Effective Date of this Consent Decree, BJB Milling shall pay twenty-two thousand five hundred dollars (\$22,500) to McKenzie River Trust for use in that organization's Coburg Aggregate Reclamation Project or some other project designed to enhance fish habitat or water quality in the McKenzie River basin. BJB Milling shall make the payment required by this Paragraph by check made payable and sent to McKenzie River Trust, 1245 Pearl Street, Eugene, Oregon 97401. BJB Milling shall notify NEDC when it makes the payment required by this Paragraph.

13. **Reimbursement of NEDC's Fees and Costs.** Within seven (7) days of the Effective Date of this Consent Decree, BJB Milling shall pay forty-five thousand dollars (\$45,000) to Kampmeier & Knutsen PLLC for costs and attorneys' fees for representing NEDC in this matter. BJB Milling shall make the payment required by this Paragraph by check made payable and sent to Kampmeier & Knutsen PLLC, 615 Second Avenue, Suite 360, Seattle, Washington 98104. BJB Milling shall notify NEDC when it makes the payment required by this Paragraph.

14. **Stipulated Payments.**

a. BJB Milling shall pay five hundred dollars (\$500) to McKenzie River Trust each time it misses a deadline or obligation established by Paragraphs 8, 9, 10, 11, 12, or 13 of this Consent Decree.

b. Additionally, for stormwater samples collected at the Facility after June 30, 2016 but before this Consent Decree expires under the terms of Paragraph 18, BJB Milling shall pay one thousand dollars (\$1,000) to McKenzie River Trust for each exceedance of a Statewide Benchmark described in Schedule A.9 of its NPDES Permit, for each exceedance of a Sector-Specific Benchmark described in Schedule E, Table E.A-1 of its NPDES Permit, and for each exceedance of a reference concentration for impairment pollutants identified on BJB Milling's NPDES Permit coversheet dated September 12, 2013.

c. BJB Milling shall make any payments required by Paragraph 14 of this Consent Decree within twenty-one (21) days of receipt of the monitoring data triggering the obligation to pay.

d. BJB Milling shall make any payments required by this Paragraph by check made payable and sent to McKenzie River Trust, 1245 Pearl Street, Eugene, Oregon 97401. The check or memorandum shall indicate that the payment is for the Coburg Aggregate Reclamation Project or some other project designed to enhance fish habitat or water quality in the McKenzie River basin. BJB Milling shall notify NEDC when it makes a payment required by this Paragraph.

15. This Court shall retain jurisdiction to oversee and ensure compliance with this Consent Decree. While this Consent Decree remains in force, the Parties may re-open this case without filing fee so they can apply to the Court for any further order or relief that may be necessary regarding compliance with this Consent Decree or to resolve any dispute regarding the this Consent Decree. Before applying to the Court under this paragraph the Parties must first seek to resolve the dispute themselves. The Party identifying or wishing to raise an issue or dispute must provide the other Party's counsel of record with written notice detailing the nature of the issue or dispute. Within thirty (30) days of receipt of such notice the Parties shall meet and confer regarding the issue or dispute. If the Parties are unable to resolve the dispute at that meeting or within thirty (30) days of the written notice, whichever occurs first, either Party may seek relief from this Court.

16. The provisions in section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), regarding awards of costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing Party, shall apply to any proceeding seeking to enforce the terms and conditions of this Consent Decree.

17. This Consent Decree shall take effect upon entry of this Consent Decree by the Court.

18. This Consent Decree shall terminate three years from date of entry.

19. All notices and other communications regarding this Consent Decree shall be in writing and shall be fully given by mailing via first-class mail, postage pre-paid; by delivering the same by hand; or by sending the same via e-mail to the following addresses, or to such other addresses as the Parties may designate by written notice, provided that communications that are mailed shall not be deemed to have been given until three business days after mailing:

For NEDC:

Mr. Mark Riskedahl, Executive Director
Northwest Environmental Defense Center
10015 S.W. Terwilliger Blvd.
Portland, Oregon 97219

For Defendant:

Todd R. Johnston
Hershner Hunter, LLP
180 E. 11th Avenue
Eugene, Oregon 97401

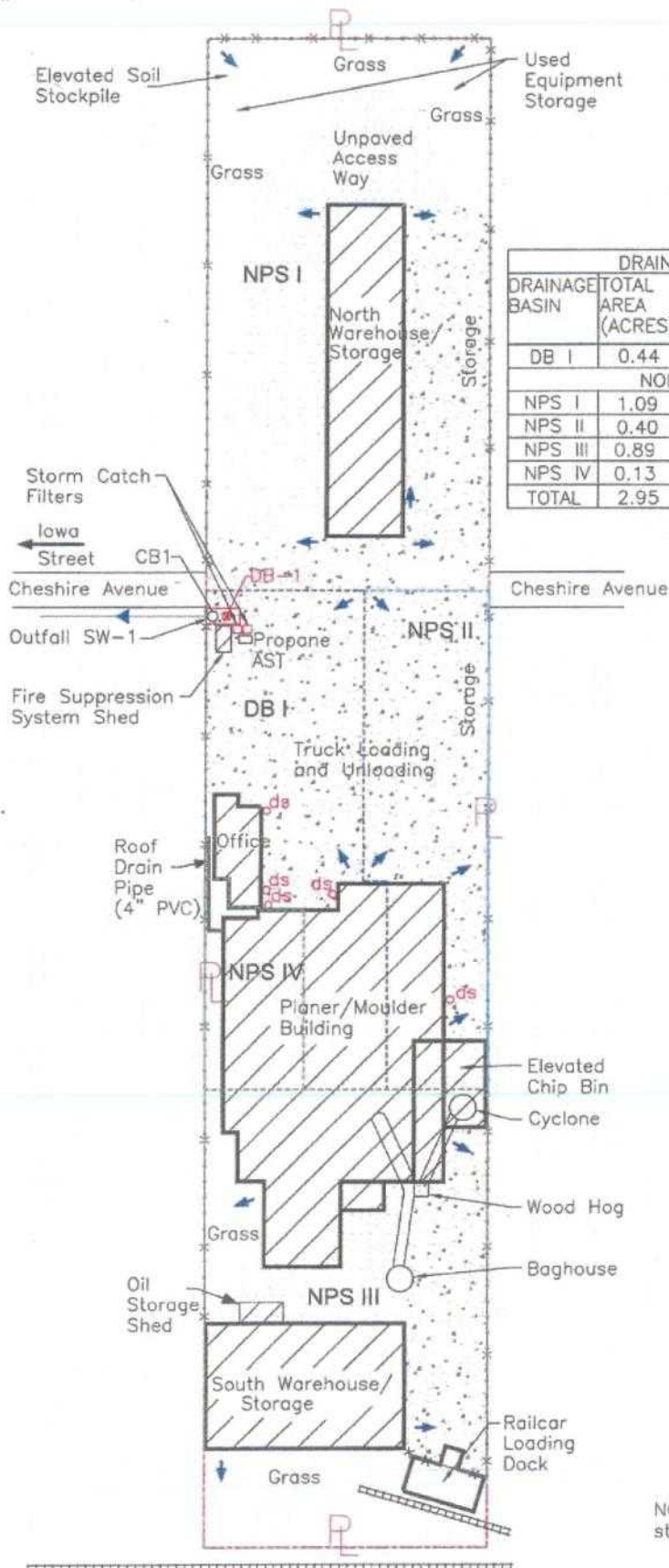
20. If any term, covenant, or condition of this Consent Decree is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision included in this Consent Decree.

IT IS SO ORDERED.

DATED this ____ day of _____ 2016,

THE HONORABLE ANN AIKEN
UNITED STATES DISTRICT JUDGE

EXHIBIT 1



DRAINAGE BASIN ACCOUNTING					
DRAINAGE BASIN	TOTAL AREA (ACRES)	IMPERVIOUS AREA (ACRES)	IMPERVIOUS PERCENTAGE	OUTFALL	BASIN SAMPLED
DB I	0.44	0.44	100%	SW-1	YES
NONPOINT DISCHARGE					
NPS I	1.09	0.48	45%		
NPS II	0.40	0.40	100%		
NPS III	0.89	0.74	83%		
NPS IV	0.13	0.08	61%		
TOTAL	2.95	2.14	73%		

SIGNIFICANT MATERIALS

Lumber
Propane
Diesel
Lubricating Oils
Waste Oils

LEGEND

- ds o Downspout Location
- DB-1 Drop Box
- Storm Catch Filter
- o Outfall Point SW-1
- Surface Flow Direction
- Storm Drain Flow Direction
- Earth
- Asphalt
- Building
- Property Line
- Fence
- Drainage Basin Boundary

NOTE: This drainage map is for storm water purposes only.

